

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,**U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/71/2022
Date of Institution	:	12/01/2022
Date of Decision	:	02/04/2024

Rashmi Kumar w/o Mr. Ashwani Kumar r/o #175, Model Colony, Sector 2, Yamunanagar, Haryana.

... Complainant

V E R S U S

Apollo Munich Health Insurance Company Pvt. Ltd., Manimajra Branch, 1st Floor, SCO-857, Shivalik Enclave, Chandigarh-160101 through its Manager/Authorized Signatory.

... Opposite Party

CORAM :

SHRI PAWANJIT SINGH	PRESIDENT
MRS. SURJEET KAUR	MEMBER
SHRI SURESH KUMAR SARDANA	MEMBER

ARGUED BY : Sh. Sukaam Gupta, Advocate for complainant (*through VC*)
: Sh. Nitesh Singh, Advocate for OP

Per Pawanjit Singh, President

- The present consumer complaint has been filed by Rashmi Kumar, complainant against the aforesaid opposite party (hereinafter referred to as the OP). The brief facts of the case are as under :-
 - It transpires from the allegations, as projected in the consumer complaint, that in the year 2012, complainant had obtained "Optima Restore Floater" Policy from the OP in which her daughter, Shreya Kumar and son, Dhruv Kumar were also members/ insured and got the same renewed every year, without any break, on payment of requisite premium and the last policy was renewed and same was valid w.e.f. 24.12.2018 to 23.12.2019 (hereinafter referred to as "*subject policy*"). On 13.5.2019, son of complainant (hereinafter referred to as "*insured patient*") experienced sudden chest allergy accompanied with high fever and he was hospitalized in Swastik Hospital, Yamuna Nagar (hereinafter referred to as "*Treating Hospital*") w.e.f. 13.5.2019 to 18.5.2019 for which total amount of ₹23,499/- was spent. The complainant lodged claim with the OP while submitting all the relevant documents including cash memos/bills, medical record. At the time of processing the said claim, OP sought certain clarifications which were explained by Dr. Vineet Jain to the OP. The record pertaining to the earlier treatment taken by the insured patient in the year 2009 from PGIMER, Chandigarh (hereinafter referred to as "*earlier hospital*") was also duly submitted as in the said year he had taken treatment for "G6PD Deficiency". However, the OP vide letter dated 5.7.2019 (Annexure C-4) had repudiated the genuine claim of the complainant on flimsy ground that the insured patient was having pre-existing disease of "G6PD Deficiency", which was not revealed in the proposal form at the time of inception of

the subject policy in the year 2012 and had concealed material facts from OP. In the year 2009, insured patient had developed severe jaundice for which he had taken treatment at the earlier hospital and he was cured as there was no recurrence of the problem till 2012 i.e. at the time when the subject policy was obtained. Not only this, after obtaining the subject policy, till date, insured patient had not taken the said treatment for "G6PD Deficiency" rather in the year 2019 the treatment for abdomen pain, vomiting, cough etc. was taken, which was not related to the earlier treatment. Not only this, OP had also cancelled the subject policy which the complainant had been obtaining since the year 2012.

Thereafter the complainant had approached the Insurance Ombudsman and vide order dated 26.2.2020 (Annexure C-5) the complaint of the complainant was dismissed in default. In this manner, the aforesaid act of the OP amounts to deficiency in service and unfair trade practice. OP was requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

- b. OP resisted the consumer complaint and filed its written version, inter alia, taking preliminary objections of maintainability, cause of action, concealment of material facts and locus standi. However, it is admitted that the complainant had been obtaining the subject policy since 2012 and the subject policy was valid w.e.f. 24.12.2018 to 23.12.2019. It is further alleged that, in fact, complainant has not disclosed the previous ailment from which the insured patient was suffering, at the time of filling the proposal form and inception of the subject policy and in this manner as the complainant has concealed material facts from the OP, her claim complainant was rightly repudiated and the policy was cancelled. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.
 - c. Despite grant of sufficient opportunity, rejoinder was not filed by the complainant to rebut the stand of the OP.
2. In order to prove their case, parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
 3. We have heard the learned counsel for the parties and also gone through the file carefully.
 - i. At the very outset, it may be observed that when it is an admitted case of the parties that initially complainant had obtained the subject policy on 24.12.2012 and continued renewing the same annually without any break till the subject policy (Annexure OP-2) was issued, which was valid w.e.f. 24.12.2018 to 23.12.2019, and in the year 2009 insured patient was treated at the earlier hospital for G6PD Deficiency and after that he never suffered from the said disease, rather in the year 2019, when he suffered with abdomen pain, vomiting, cough, etc., he was admitted at the Treating Hospital w.e.f. 13.5.2019 to 18.5.2019, as is also evident from the discharge summary (Annexure C-3), the case is reduced to a narrow compass as it is to be determined if the OP is unjustified in repudiating the genuine claim of the complainant and cancelling the subject policy and the complainant is entitled to the reliefs prayed for in the consumer complaint, as is the case of complainant or if the OP has rightly rejected/repudiated the claim and cancelled the subject policy on the ground of non-disclosure and concealment of facts and the consumer complaint of the complainant, being false and frivolous, is liable to be dismissed, as is the defence of the OP.
 - ii. In the backdrop of the foregoing admitted and disputed facts on record, one thing is clear that the entire case of the parties is revolving around the subject policy, medical record, having been relied upon by the OPs and claim rejection/repudiation letter as well as policy cancellation letter and the same are required to be scanned carefully for determining the real controversy between the parties.
 - iii. Perusal of copy of subject policy (Annexure OP-2) clearly indicates that the same was valid w.e.f. 24.12.2018 to 23.12.2019 and the same was initially obtained in the year 2012 and was renewed annually by the complainant without any break till the subject policy was issued by the OP.
 - iv. Annexure C-4 is copy of claim rejection letter dated 5.7.2019, which indicates that the claim of the complainant was repudiated on the ground of non disclosure and concealment of facts as the insured patient was having medical history of G6PD Deficiency. The relevant portion of the said letter is reproduced below for ready reference :-

"We have carefully reviewed your claim based on the document(s) submitted. We regret to inform you that your claim is not payable under the policy.

Please find the rejection details below :

1) The medical history details of "G6PD Deficiency" is not revealed while taking the policy in the proposal form. Hence the claim is repudiated due to Non disclosure and concealment of facts under section VI, J of policy terms and conditions."

- v. Annexure OP-7 is copy of notice of termination of subject policy dated 1.7.2019 and relevant portion of same is reproduced below for ready reference :-

"Reference your above policy and claim we have carefully reviewed all relevant documents submitted by you and those available with us. Following material facts with regard to the insured member's health condition have been noted.

1. Master Dhruv Kumar: Known case of G6PD Deficiency since 2009.

Aforementioned facts about the health condition of insured member were never disclosed to us at the time of application for health insurance coverage (Proposal Form no.6100202598 dated 24-12-2012). Please note that the said condition is material to us from underwriting perspective.

In view of the above suppression of material facts we hereby serve you this notice of 30 days for termination of your Policy (from last renewal date). Please note you are not entitled for any benefit under the Policy and the premium paid by you stands forfeited.

We would issue and send you an endorsement to the effect of termination of your Policy after lapse of 30 days from this notice at your address shown in the Policy Schedule."

- vi. Annexure C-3 indicates that the insured patient was admitted in the Treating Hospital on 13.5.2019 and was discharged on 18.5.2019 and was diagnosed with fever, chest allergy etc.
- vii. OP has also proved copy of certificate (annexed with Annexure OP-5 at Page 51) issued by the Treating Hospital and the relevant portion of the same is reproduced as under :-

"This is certified that Mr. DHRUV KM was admitted in our Hospital on 13/5/19. ↓CR No.79. His Past History ... G6PD deficiency which was diagnosed in PGIMER and when he was admitted there from 25/2/2009 to 4/3/09 ↓CR No.A942847. This is for your information & necessary action."

Further, the treatment record/case history (Annexure OP-5 at page 70), which was taken by the insured patient on 13.12.2019 in the Treating Hospital shows he was diagnosed with loose watering, pain abdomen, nausea, vomiting, cough etc.

- viii. The learned counsel for the complainant contended with vehemence that as it stands proved on record that in the year 2019, insured patient was suffering from altogether different disease i.e. fever, chest allergy etc., when he took treatment at the Treating Hospital, and the same has no nexus with the earlier disease i.e. G6PD Deficiency, from which he had suffered in the year 2009 and took treatment at the earlier hospital, OP has wrongly repudiated the genuine claim of the complainant and the consumer complaint deserves to succeed.
- ix. On the other hand, learned counsel for the OP contended with vehemence that as it stands proved on record that the complainant, while obtaining the subject policy, did not disclose the factum of the insured patient suffering from G6PD Deficiency, the claim was rightly repudiated and policy was cancelled on the ground of non-disclosure and concealment of material facts as per the terms and conditions of the subject policy.
- x. There is no force in the contention of learned counsel for the OP because it is evident from the record that the insured patient had taken treatment from the Treating Hospital for abdomen pain, nausea, vomiting, cough etc., which he had suffered in the year 2019 i.e. after 7 years of the inception of the policy, which was obtained by the complainant in the year 2012, whereas in the year 2009 he had taken treatment from the earlier hospital for G6PD Deficiency and there is no connection/nexus between the two diseases/ailments.

- xi. The Hon'ble National Commission in case titled as ***Neelam Chopra Vs. Life Insurance Corporation of India & Ors., IV (2018) CPJ 321 (NC)***, while dealing with the question of suppression/non-disclosure of material facts, has held as under :-

12. In the present case, clearly the cause of death is cardio respiratory arrest and this disease was not existing when the proposal form was filled. Clearly, there is no suppression of material information in respect of this disease, which is the main cause of death. The other disease of LL Hansen, which was prevailing for five weeks on the date of admission on 1.8.2003 was also not existing when the proposal was filed by the DLA. The fact of DLA having been treated in the year 2002 for LL Hansen is not supported from any direct evidence though PGI Chandigarh in its certificate has mentioned that disease was treated in 2002. Moreover, this disease does not have any correlation with the cause of death in the present case. Hon'ble Supreme Court in Sulbha Prakash Motegaonkar and Ors. v. Life Insurance Corporation of India, Civil Appeal No.8245 of 2015, decided on 5.10.2015 (SC) has held the following:

“We have heard learned Counsel for the parties.

It is not the case of the Insurance Company that the ailment that the deceased was suffering from was a life threatening disease which could or did cause the death of the insured. In fact, the clear case is that the deceased died due to ischaemic heart disease and also because of myocardial infarction. The concealment of lumbar spondylitis with PID with sciatica persuaded the respondent not to grant the insurance claim.

We are of the opinion that National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with this lumbar spondylitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified.”

- xii. In view of the foregoing discussion and the ratio of law laid down above, it is clear that the OP/insurer has not been able to connect the previous diseases/ailments with the present diseases/ailments, for which the insured patient had taken treatment from the treating hospital. Hence, it is unsafe to hold that the OP/insurer was justified in rejecting/repudiating the claim of the complainant as well cancelling the subject policy and the present consumer complaint deserves to succeed.
- xiii. Now coming to the quantum of amount, since the complainant has proved the receipts/bills (Annexure C-2 colly.) totaling to ₹23,499/- towards the expenses spent on hospitalisation/treatment of the insured patient, it is safe to hold that OP/insurer is liable to pay the said amount to the complainant alongwith interest and compensation etc.

4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OP is directed as under :-

- i. To restore the subject policy in the name of the complainant, as per its terms & conditions, with upto date benefits on payment of requisite charges, if any;
- ii. to pay ₹23,499/- to the complainant alongwith interest @ 9% per annum from the date of rejection/repudiation of the claim i.e. 5.7.2019 onwards.
- iii. to pay ₹10,000/- to the complainant as compensation for causing mental agony and harassment;
- iv. to pay ₹7,000/- to the complainant as costs of litigation.

5. This order be complied with by the OPs within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr.No.(ii) & (iii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of remaining directions.

6. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

7. Certified copies of this order be sent to the parties free of charge. The file be consigned.

02/04/2024

hg

Sd/-

[Pawanjit Singh]

President

Sd/-

[Surjeet Kaur]

Member

Sd/-

[Suresh Kumar Sardana]

Member